DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CERE-MM (405-80a) 15 April 1991

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Guidance on Compliance with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620(h)) (CERCLA)

1. The enclosure to this memorandum was approved on 27 March 1991 by the Deputy Assistant Secretary of the Army (Installations & Housing) for immediate release to all USACE divisions and districts.

2. The enclosure details the impact CERCLA will have on the outgrant and disposal of contaminated or possibly contaminated military lands, and provides guidance for your use in complying with the new law. The language in paragraph 2a of the enclosure is now a required part of all outgrant (e.g. each lease, easement, license, permit) documents, and contracts of sale, for such lands. Likewise, all disposal (e.g. each deed or deed equivalent) documents for such lands will require the language in paragraph 2b.

3. As background, Congress enacted CERCLA in 1980 seeking to correct the problems associated with abandoned and inactive hazardous waste sites. But CERCLA's requirements reach beyond addressing toxic waste dumps and have wide-ranging implications for all Federal agencies involved in the outgrant and disposal of real property.

a. As interpreted by the Environmental Protection Agency (EPA) in its regulation (40 CFR Part 373), CERCLA requires any agency of the United States which enters into a contract on or after 17 October 1990, agreeing to sell or transfer real property on which a hazardous substance has been stored, released, or disposed of in certain quantities during the period of Federal ownership, to give in the sale or transfer document a detailed notice of the potential environmental hazards (42 U.S.C. 9620(h)(1) and (2)) (Notice).

b. In addition, CERCLA requires a covenant to be placed in each deed entered into after 17 October 1990 to private parties, state, and local governments warranting that all remedial action necessary to protect human health and the environment with regard to hazardous substances stored, released, or disposed of during the period of Federal ownership has been taken prior to the date of transfer and will be taken in the future if found necessary (42 U.S.C. 9620(h)(3)) (Warranty).

c. We have drafted our guidance to address both the Notice and Warranty requirements of CERCLA on military lands. Guidance for civil works properties will be issued at a later date.

4. Questions or comments on the enclosure should be directed to this office in writing or by telephone to Mr. David Jenks (202) 272-0504.

FOR THE DIRECTOR:

Encl

A. MONTAGUE FERRY
Chief, Management and Disposal Division
Real Estate Directorate

CERE-MM
SUBJECT: Guidance on Compliance with CERCLA

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ENCLOSURE

GUIDANCE ON COMPLIANCE WITH 42 U.S.C. 9620(h), et seq.(CERCLA)

1. a. Review of the Notice requirement. The EPA regulations at 40 CFR Part 373 provide:

373.1. General Requirement

After the last day of the 6-month period beginning on April 16, 1990, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and at which, during the time the property was owned by the United States, any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality must include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

373.2 Applicability

(a) Except as otherwise provided in this section, the notice required by 40 CFR 373.1 applies whenever the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released or disposed of.

(b) The notice required by 40 CFR 373.1 for the storage for one year or more of hazardous substances applies only when hazardous substances are or have been stored in quantities greater than or equal to 1000 kilograms or the hazardous substance's CERCLA reportable quantity

found at 40 CFR 302.4, whichever is greater. Hazardous substances that are also listed under 40 CFR 261.30 as acutely hazardous wastes, and that are stored for one year or more, are subject to the notice requirement when stored in quantities greater than or equal to one kilogram.

(c) The notice required by 40 CFR 373.1 for the known release of hazardous substances applies only when hazardous substances are or have been released in quantities greater than or equal to the substance's CERCLA reportable quantity found at 40 CFR 302.4.

373.3 Content of Notice

The notice required by 40 CFR 373.1 must contain the following information:

(a) The name of the hazardous substance; the Chemical Abstracts Services Registry Number (CASRN) where applicable; the regulatory synonym for the hazardous substance, as listed in 40 CFR 302.4, where applicable; the RCRA hazardous waste number specified in 40 CFR 261.30, where applicable; the quantity in kilograms and pounds of the hazardous substance that has been stored for one year or more, or known to have been released, or disposed of, on the property, and the date(s) that such storage, release, or disposal took place.

(b) The following statement, prominently displayed: "The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund") 42 U.S.C. section 9620(h)."

Section 373.4 of the regulations defines the terms hazardous substances, storage, release and disposal.

b. Review of the Warranty requirement. CERCLA provides at 42 U.S.C. 9620(h)(3):

Contents of Certain Deeds. - After the last day of the 6-month period beginning on the

effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain-

(A) to the extent such information is available on the basis of a complete search of agency files--

(i) a notice of the type and quantity of such hazardous substances,

(ii) notice of the time at which such storage, release, or disposal took place, and

(iii) a description of the remedial action taken, if any, and

(B) a covenant warranting that--

(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.

2. Standard language for CERCLA compliance. When required due to the storage, release, or disposal of hazardous substances, the following standard language will be used in all outgrant documents and deeds prepared for use with Army-controlled real property:

a. Standard language for Notice requirement. The following language is a required part of all outgrant

documents granting use and possession of lands under the control of the Department of the Army on which hazardous substances in certain quantities have been stored, released, or disposed of. This requirement applies to all contracts for the sale or other transfer of real property (including, but not limited to, exchange agreements, leases, easements, permits, and licenses) entered into after 17 October 1990:

"CERCLA NOTICE

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act, as amended (CERCLA) 42 U.S.C. 9620(h). The Grantor has made a complete search of its records concerning the property subject to this contract. Those records indicate that the following hazardous substances, as defined below, have been stored for one year or more (S), released (R), or disposed of (D) on the property during the time the property was owned by the United States of America. The transferee should consult the Preliminary Assessment Screening document (PAS) attached hereto as Exhibit ___ for more details, or where indicated:

SUBST	QUANT	CASRN	SYNONYM	RCRA#	DATE	S/R/D
xxx	xxx	xxx	xxx	xxx	xxx	x

"SUBST" shall mean any member of that group of substances defined as hazardous under CERCLA Section 101(14) and appearing at 40 CFR 302.4;"QUANT" shall mean the quantity in kilograms and pounds of the hazardous substance; "CASRN" shall mean the Chemical Abstracts Services Registry Number (CASRN), where applicable; "SYNONYM" shall mean the regulatory synonym for the hazardous substance, as listed in 40 CFR 302.4, where applicable; "RCRA#" shall mean the RCRA hazardous waste number specified in 40 CFR 261.30, where applicable; "DATE" shall mean the date(s) that such storage release, or disposal took place; "*" shall mean that the information is either not available,

is incomplete, or requires further explanation, and the transferee should review the narrative discussion in the Preliminary Assessment Screening document (PAS) found at Exhibit ___ for further details."

b. Standard language for Warranty requirement. The following language is a required part of all deeds, or documents which under the law of the location of the property to be disposed of are considered to be deed equivalents, entered into after 17 October 1990 transferring real property under the control of the Department of the Army on which hazardous substances in certain quantities have been stored, released, or disposed of:

"CERCLA WARRANTY

Pursuant to Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (CERCLA) 42 U.S.C. 9620(h), the Grantor has made a complete search of its records concerning the property subject to this deed. Those records indicate that the following hazardous substances, as defined by Section 101(14) of CERCLA, and listed below, have been stored for one year or more (S), released (R), or disposed of (D) on the property during the time the property was owned by the Grantor. Where "*" appears, the information is either not available, incomplete, or requires further explanation, and the Grantee should review the Statement of Condition (SOC) attached hereto as Exhibit ___ for further details. The Grantor covenants and warrants that all remedial action necessary to ensure protection of human health and the environment with respect to any such substance remaining on the property has been taken prior to the date hereof. Furthermore, excepting those situations where the Grantee hereunder is a potentially responsible party, as defined by CERCLA, any additional remedial action found to be necessary with respect to any such substance remaining on the property after the date hereof shall be conducted by the United States:

TYPE OF HAZARDOUS SUBSTANCE	S R D	QUANTITY	DATE OF STORAGE RELEASE, OR DISPOSAL	ACTION TAKEN
xxx	x	xxx	xxx	xxx

3. Notes and Questions.

a. What documents must contain the above Notice language? CERCLA requires the Notice to be given whenever any department, agency, or instrumentality of the U.S. enters into a contract for the sale or other transfer of contaminated (as defined by CERCLA) real property. The "contracts" used by the Department of the Army to "transfer" interests in real property are contracts of sale, deeds, exchange agreements, leases, easements, and under certain interpretations, permits and licenses. Although permits and licenses do not transfer an "interest" in real property, some long-term exclusive-use permits are tantamount to a transfer of a property interest. Accordingly, we have decided the Notice will be placed in all outgrant documents allowing use or possession of property under the control of the Department of the Army. This decision is consistent with what we believe to be the intent of Congress in enacting CERCLA.

b. What documents must contain the above Warranty language? CERCLA requires the Warranty to be placed in all deeds. The Department of the Army uses deeds only when transferring real property interests to private individuals, state, and local governments. We do not use deeds for intra-DOD transfers or transfers to other Federal agencies. Accordingly, we assume that Congress intended the Warranty to be placed in all deeds to private individuals, state, or local governments. As you know, most disposals of surplus military property are handled by GSA pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and do not involve a deed from the Department of the Army to GSA, but only a transfer of accountability. It is GSA that transfers by deed this type of property to the private individual, state, or local purchaser. Accordingly, GSA would be responsible for placing the Warranty in the deed of transfer, and not the Department of the Army.

c. Does Section 120(h) apply to latent (unknown at time of transfer) contamination later discovered by the agency? No. As explained by Richard B. Stewart, Assistant Attorney General, Department of Justice (DOJ), in a recent memorandum, CERCLA could be read to impose onerous obligations on Federal agencies, particularly if the United States could be held responsible for hazardous substances left by previous land owners on any of its properties, without regard to how long the property was held or what government function was performed at the property. Note that Section 120(h) does not, on its face, differentiate between hazardous substances existing at the time a property was acquired by the U.S., and those that were stored, released, or disposed of during the period of Federal ownership. It appears from the legislative history of CERCLA, however, that Congress was principally concerned with addressing federal facilities engaged in waste generating practices and other activities that occurred

during the period of Federal ownership. The EPA explains in its regulation (40 CFR Part 373):

> EPA believes that the concern of Congress in enacting section 120(h) was with federally owned facilities whose own operations might involve storage, disposal or release of hazardous substances. The types of facilities cited in Congressional discussion of section 120 included military bases, Department of Energy nuclear production facilities, and other civilian installations. Moreover, nothing in the text or legislative history of the statute suggests that Congress meant to require agencies which had not in some manner been responsible for the storage, release or disposal of hazardous substances to unilaterally assume the obligation in section 120 (h)(3) of remedying the contamination prior to sale and warranting that contamination that came to light after sale would also be corrected. In addition, section 120 (h)(1) requires the notice to contain information about the type and quantity of hazardous substance stored, released, or disposed of, and the time at which such storage, release or disposal took place. It is unlikely that the agency would be expected to have such detailed information with respect to an activity which took place before the agency held the property.
>
> Therefore, it is EPA's belief, in light of the overall statutory scheme, that section 120(h) (1) was meant to apply where the storage, release, or disposal referred to in the statute occurred during the time the property was owned by the Federal government.

55 Fed. Reg. 14210. (emphasis added) Consistent with this interpretation, EPA's regulation requires:

> . . . whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the

United States and at which, during the time the property was owned by the United States, any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality must include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

55 Fed. Reg. 14212. (emphasis added).

The regulation does not directly address the section 120(h)(3) Warranty, but we believe, in accordance with the DOJ memorandum, that the Warranty requirement concerns only those hazardous substance activities which are subject to the Notice requirement of section 120(h)(1). On the same reasoning which supports not requiring agencies to give the section 120(h)(1) notice of events which did not occur during their ownership, the statue does not support requiring the agencies to provide warranties for hazardous waste activities which did not occur during their ownership.

d. What documents must be examined before an outgrant or disposal action can take place? The Notice and Warranty requirements of CERCLA highlight the importance of Corps and installation records documenting past uses of Army real property.

For outgrants, the Preliminary Assessment Screening document (PAS), which replaced the Environmental Baseline Study (EBS), required by AR 200-1, as revised, must be examined by the District in all instances. The PAS should contain most of the information CERCLA requires to be placed in the outgrant document. The Army Environmental Office has issued new guidance on implementing that regulation (see ENVR-EH memorandum dated 1 November 1990, subject: Real Property Transactions and Preliminary Assessment Screening (PAS), attached).

For disposals, recent Army policy requires a Statement of Condition (SOC) to be prepared by USATHAMA for all disposal actions (see ASA(I,L&E) memorandum dated 10 December 1990, subject: Excessing of Contaminated Army Lands, attached). Since the SOC is intended as a summary of the environmental condition of the property, it should contain the information required by CERCLA to be placed in the deed of transfer.

In addition, for both outgrants and disposals the District

should review all available audit files and past reports of availability. Normally, these records will have already been examined by the installation or USATHAMA when preparing the PAS or SOC, but you are advised to give close scrutiny to the PAS or SOC to confirm it represents a thorough summary of past activities on the property. All endorsements to this office will contain a statement that the installation, District, and Division have made a complete search of all available records.

e. Does Notice under CERCLA equate with liability? No. It should be remembered that CERCLA's Notice and Warranty requirements under section 120(h) are not dispositive on the issue of liability for contamination and payment for clean-up costs. It is conceivable that a prior owner of Federal lands could have stored, released, or disposed of a hazardous substance on the property before transferring the property to the Federal Government. Although the Federal government would not be required by section 120(h) to give the Notice or Warranty as to this substance, section 107 of CERCLA could impose upon the agency liability for cleanup. The Notice and Warranty requirements of section 120(h) are not to be confused with the more expansive liability provisions in Section 107.

f. Should we give notice of latent contamination discovered by the agency during its ownership even if Section 120(h) does not require it? Yes. Section 120(h) deals only with storage, release, and disposal of hazardous substances that occurred during the period of Federal ownership. In 1986, when Congress amended CERCLA, it added a third-party defense to protect innocent landowners who purchased contaminated property unknowingly. The defense allows these innocent landowners to escape CERCLA liability for clean-up costs if they meet certain conditions. The conditions established in section 101(35) of CERCLA for the innocent landowner defense require:

> (1) acquisition of the property after the disposal or placement of the hazardous substance on, in, or at the facility,

and either,

> (2) no knowledge of the hazardous substance,

or,

> (3) the defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation,

or,

(4) acquisition of the property by inheritance or bequest

but, in any case,

(5) if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge no defense under Section 107(b) will be available.

The above language from 42 U.S.C. 9601(35) (Disclosure) allows a government agency which acquires unknowingly or through involuntary means to invoke a defense from liability for clean-up costs for hazardous substance contamination found on real property as a result of prior owner's activities if that federal agency, among other things, provides notice to any transferee of those hazardous substance conditions about which it knows.

Accordingly, you should confirm that the PAS or SOC prepared for each outgrant or disposal action notes any knowledge the Department of the Army might have of contamination by a former owner. This disclosure will usually be made in the form of a narrative, and should be coordinated with USATHAMA.

g. Is the Notice, Warranty, and Disclosure language always necessary? No. We reiterate that the language in paragraphs 3a and 3b will be required only when transferring property under the control of the Department of the Army on which hazardous substances as defined by CERCLA and discovered through actual knowledge or a record search were stored, released or disposed of in certain quantities during the period of Federal ownership. If the records do not indicate that hazardous substances were stored, released, or disposed of on the property, the language of paragraphs 3a and 3b is inapplicable and the transfer will be handled pursuant to the usual requirements of AR 405-80 or AR 405-90.

Nevertheless, even where CERCLA may not technically require the Notice or Warranty, (for example an action where our records indicate that only 900 kilograms of a hazardous substance have been stored on the property) you should confirm that the PAS or SOC discloses this information to the user or purchaser. Do not, in any case, certify or make statements that might induce the

purchaser or user to assume that there are no environmental hazards or hazardous substances on the property.

h. What is a complete search? It depends on the action. The EPA declined to explain in its regulation what a "complete" search would entail. You should review the discussion of 40 CFR Part 373 in Section IIE of the Federal Register, (Vol. 55, No. 73, Monday, April 16, 1990) for more details. In any outgrant or disposal action you should make a reasonable and good faith effort to identify whether any hazardous substances have been stored, released, or disposed of on the property. Actions which involve the disposal of past industrial sites, for example, will require a more thorough search of records than those concerning a disposal of past agricultural lands. You should, in all cases, look beyond the PAS or SOC as these documents may not have considered records which are germane to the Corps of Engineers and not readily available at the installation level.

i. When must we begin to implement this guidance? Immediately. The Notice and Warranty requirements of CERCLA are mandatory, effective 17 October 1990, and must be complied with immediately.

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

12 Dec 90

CEMP-RT (200-1a)

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Real Property Transactions and Preliminary Assessment Screenings

1. Reference, Memorandum, HQDA, ENVR-EH, 1 Nov 90, SAB.

2. Preliminary Assessment Screenings (PAS), to document potential for environmental contamination and to reduce Army liability, should be conducted for sites that are proposed for real property transactions.

3. The enclosed guidance outlines how PAS should be conducted for new real property transactions initiated after 1 Jan 91.

4. Any comments on this policy should be provided to this office NLT 30 days from the date of this memorandum so they can be considered for the revision of AR 200-1 planned for spring 1991.

5. This action has been coordinated with CERE-A & CERE-M

6. POC this headquarters is Mr. Richard L. Beardslee at (202) 504-4988.

FOR

WAYNE J. SCHOLL
Colonel, Corps of Engineers
Chief, Environmental Restoration
Division
Directorated of Military Programs

Encl

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20310-2600

REPLY TO
ATTENTION OF:

ENVR-EH (200-1c)

1 NOV 1990

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Real Property Transactions and Preliminary Assessment Screenings (PAS)

1. References:

a. Memorandum, HQDA, ENVR-EH, 1 Nov 89, subject: Real Property Transactions and Environmental Baseline Studies (EBS).

b. AR 200-1, 23 Apr 90, "Environmental Protection and Enhancement."

2. Since the issuance of EBS regulations (references 1.a and 1.b above), MACOMs and subordinate installations have expressed difficulties implementing these requirements. These field implementation problems resulted in cumbersome real property transactions. An analysis of EBS determined that the scope of the program was too broad and redundant, and it did not focus on the primary issue of environmental contamination. Consequently, the Army Environmental Office (AEO) has prepared guidance for a more focused implementation of the EBS program that concurrently replaces the EBS program with a "Preliminary Assessment Screening" (PAS). The replacement of the EBS program with the PAS is intended to reduce confusion; incorporate the EBS program concept into existing Army programs; and generally focus and simplify the intent of the EBS, which is to document significant contamination and reduce Army liability.

3. A PAS will determine if hazardous substances were stored, released into the environment or structures, or disposed of on a proposed real property transaction site. The purpose of a PAS is to develop sufficient information to support a Record of Environmental Consideration (REC) or to be integrated into an Environmental Assessment (EA) or Environmental Impact Statement (EIS); to adequately assess the health and safety risks; define the nature, magnitude, and extent of any environmental contamination; and identify the environmental contamination liabilities associated with a real property transaction. The PAS is not a separate document within NEPA, but is a necessary additional evaluation for real property transactions required under NEPA.

ATTACHMENT

ENVR-EH (200-1c)
SUBJECT: Real Property Transactions and Preliminary Assessment Screenings (PAS)

4. Request you transmit the enclosed policy guidance to all Environmental and Real Estate Offices within your command, and ensure that new real property transactions initiated 60 days after the date of this memorandum comply with the provisions of the enclosure.

5. If you have comments on this new guidance, please provide them to the AEO within 45 days from the date of this memorandum. Your comments will be considered in the final language change for the revision of AR 200-1.

6. The Army Environmental Office POC on this matter is Mr. Michael Cain, commercial (703) 693-5032, or DSN 223-5032.

FOR THE CHIEF OF ENGINEERS:

GARY JONES
DEPUTY ASSISTANT
CHIEF OF ENGINEERS

for PETER J. OFFRINGA
Major General, USA
Assistant Chief of Engineers

Encl

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US ARMY ENVIRONMENTAL HYGIENE AGENCY, ATTN: HSHB-ME-SH
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SUPERINTENDENT, US MILITARY ACADEMY, ATTN: MAEN
CHIEF, ARMY RESERVE, ATTN: DAAR-CM
CHIEF, NATIONAL GUARD BUREAU, ATTN: NGB-ARI-E

ENVR-EH (200-1c)
SUBJECT: Real Property Transactions and Preliminary Assessment Screenings (PAS)

(CONT)
CF:
DASA(ESOH)
DASA(I&H)
SAGC
DAJA-EL
DACS-SF
DASG-ZA
COMMANDER,
US FORCES KOREA/EIGHTH US ARMY, ATTN: ENJ
US ARMY SOUTH, PANAMA, ATTN: SOEN

12-5. Real property transactions

a. The Army proponent for a real property acquisition, transfer, or disposal transaction, which involves other than an Army agency and is within the United States, its territories and possessions will comply with the requirements set forth in this paragraph, in addition to the procedures found in AR 405-10, AR 405-80, and AR 405-90. For the definition of acquisition, transfer, or disposal, see glossary. (Note that the definitions of these terms do not include Government owned - Contractor operated (GOCO) contracts, renewal of existing contracts, third party contracts, and interservice support agreements).

b. Sections 12-5 (Real Property Transactions) and Appendix B (Environmental Baseline Study Protocol) of AR 200-1, 23 April 1990, are hereby superseded and cancelled.

c. Preliminary Assessment Screening (PAS). A PAS is conducted to determine if hazardous substances (as defined in glossary) were stored, released into the environment or structures, or disposed of on a site. The purpose of a PAS is to develop sufficient information to adequately assess the health and safety risks, define the nature, magnitude, and extent of any environmental contamination, and identify the potential environmental contamination liabilities associated with a real property acquisition, transfer, or disposal transaction.

d. A PAS provides information which will be integrated and documented in a Record of Environmental Consideration (REC), Environmental Assessment (EA), or Environmental Impact Statement (EIS) for all real property acquisition, transfer, or disposal transactions which meet all of the following conditions:

(1) The real property acquisition, transfer, or disposal transaction is within the United States, its territories, or possessions.

(2) The real property acquisition, transfer, or disposal transaction is conducted with a non-Army party.

e. A PAS screening must determine the type and quantity of such hazardous substance and period of time over which such storage, release into the environment or structures, or disposal took place, to the extent such information is available on the basis of a comprehensive records search and site inspection.

f. Items to be considered during the PAS process should include, but are not limited to:

(1) Properties or structures in which it is known that hazardous substances were stored, released, or disposed of.

(2) Installation Restoration Program (IRP) Initial Installation Assessment documents, Preliminary Assessment/Site Investigation (PA/SI) reports, Remedial Investigation/Feasibility Study (RI/FS) status reports; land use plans, and other environmental review reports; Installation Master Plan; Asbestos Surveys; etc.

(3) Aerial photos.

(4) Visual Site Inspection (unusual odors, stained soils, stressed vegetation, leachate seeps, land features related to human activities, unnatural surface features, etc.).

(5) Any permit, permit discontinuance or closure requirements.

(6) Other sources of information such as interviews or review of historic records.

g. The Army proponent is responsible for the completion of the PAS portion of the REC, EA, or EIS for transactions they have initiated. Non-Army parties will be requested to perform the PAS for transactions they have initiated.

h. Following completion of a PAS:

(1) The Army proponent will ensure that the findings of the screening are compiled in the form of a brief PAS statement of findings. The PAS statement of findings will be included in the REC,

(2) The Army proponent will ensure that the statement of findings for the PAS are integrated into the "Affected Environment" portion of the EA or EIS, whichever is appropriate.

(3) The statement of findings for the PAS will draw conclusions and provide recommendations on the acceptability of the proposed real property acquisition, transfer, or disposal transaction. Based on the PAS, the proponent must determine whether there is any reason to suspect that any hazardous substance was stored, released into the environment or structures, or disposed of on the subject property.

i. When the PAS indicates that no hazardous substance storage, release into the environment or structures, or disposal took place on the subject property or that the existence of a release of hazardous substances into the environment is not considered probable, the following applies:

(1) The PAS will be made part of the real property acquisition, transfer, or disposal transaction record to serve as documentation for the hazardous substance contamination condition of the property.

(2) Upon completion of i(1) above, the Army proponent has satisfied the PAS requirements of this section.

j. If the existence or potential for a release of hazardous substances into the environment or structures of the subject property is determined through the PAS process (comprehensive records search and site inspection), the Army proponent must carry out the DERP investigation procedures of AR 200-1, Chapter 9 or elect to exclude that portion of property from the real property acquisition, transfer, or disposal transaction. This does not apply to releases for which appropriate response action has already been taken.

k. Contamination on Army property will be identified through appropriate command channels and appropriate action will be taken to minimize risks associated with the real property acquisition, transfer, or disposal transaction.

l. The Army may require the owner of land it intends to acquire to address identified contamination in accordance with the National Contingency Plan (NCP), 40 CFR Part 300 prior to undertaking the acquisition.

m. For real property acquisition, transfer, or disposal transactions initiated by non-Army parties:

(1) The Army proponent will assure completion of a PAS and should participate actively when a non-Army party performs a PAS.

(2) The Army will prepare the PAS even though the non-Army party initiated the transaction if that party is either unwilling or is unable to conduct the PAS and the Army proponent determines that the transaction would be in the best interest of the Army.

(3) The Army proponent that prepares a PAS for a real property acquisition, transfer, or disposal transaction initiated by a non-Army party may request technical assistance from the supporting USACE District, USAEHA, USATHAMA or USACE Huntsville Division as appropriate.

Glossary

(These terms will be new. Add to existing AR 200-1 Glossary.)

Section II

Terms

Acquisition
Obtain, use, or control real property by purchase, condemnation, donation, exchange, easement, license, lease, permit, revestment and recapture as defined in chapter 1-4, Estates and methods of acquisition, of AR 405-10.

Army Proponent
The lowest level decisionmaker, i.e., the Army unit, element, or organization responsible for initiating or carrying out the proposed action.

Disposal (Real Property)
Any authorized method of permanently divesting DA of control of and responsibility for real estate.

Hazardous Substance
d. For the purpose of this regulation, chapter 12-5, Real property transactions, hazardous substances will also include Polychlorinated biphenyls (PCB's); Petroleum, Oil, and Lubricants (POL); Friable Asbestos; and Unexploded Ordnance (UXO).

Real Property
Land; present possessory interests in land; structures, fixtures, and other improvements on land; surface waters and ground water within the boundaries of the land; other interests in the land; and future interests in the land, in the United States, its territories and possessions.

Storage
The holding of hazardous substances (as defined in this section) for a temporary period prior to the hazardous substance being either used, neutralized, disposed of, or stored elsewhere.

Transfer
Permits to other government agencies, easements, leases (except agricultural or grazing leases) and licenses (except minor licenses granted by the installation's commander incident to post administration).

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310-0103

10 December 1990

REPLY TO
ATTENTION OF

MEMORANDUM FOR ~~DIRECTOR OF THE ARMY STAFF~~ JOSEPH P. DONNELLY, LTC, GS, ADAS 12/18/90

SUBJECT: Excessing of Contaminated Army Lands--
ACTION MEMORANDUM

Under applicable law, excess property is defined as "any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof."

This is to furnish guidance that, as a general rule, Army lands will not be considered excessable until:

(a) Lands contaminated with toxic, chemical and other hazardous substances have been decontaminated to the extent necessary to protect human health and the environment and a Statement of Condition has been prepared and signed by the Commander of the U.S. Army Toxic and Hazardous Materials Agency for all properties proposed for excessing. (The Statement of Condition will describe all actions taken to eliminate, control or contain environmental contamination. It will also describe any use restrictions that should be placed on the property to ensure protection of human health and the environment.)

(b) Lands contaminated with explosive hazards, have been rendered innocuous and a Statement of Clearance, as prescribed by Army Regulation 405-90, has been issued by the using command.

Contaminated lands will remain under the jurisdiction and accountability of the using command until the decontamination mission has been completed.

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ATTACHMENT

During the decontamination period, outgranting for grazing, agricultural, industrial or commercial purposes may be permitted, subject to the requirements of Section 120(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, if the lands are determined available and safe for the proposed use.

Request necessary action be taken to implement this policy.

Michael W. Owen
Principal Deputy Assistant Secretary of the Army
(Installations, Logistics & Environment)